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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/709,875

06/02/2004

Nathan Pyles

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EXAMINER

RICHMAN, GLENN E

ART UNIT

PAPER NUMBER

3764

MAIL DATE

DELIVERY MODE

03/13/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/709,875	PYLES ET AL.	
	Examiner	Art Unit	
	/Glenn Richman/	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/2/04, 8/12/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-9, 20, 22-25, 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Itoh et al.

Itoh discloses a step counter for continually counting a cumulative number of steps taken by a user throughout a period of time both while the user is on and off of an exercise machine 10, the step counter comprising a first communication means for periodically communicating a current value of the cumulative number of steps taken by the user to a console of the exercise machine while the user is on the exercise machine 0022, the console comprising, a second communication means for periodically receiving the current cumulative number of steps from the step counter while the user uses the exercise machine 0022.

Itoh further discloses the exercise machine is selected from the group consisting of a treadmill and an elliptical trainer fig. 1, communication between the first and second communication means is wireless 0031, the console further comprises a display 26, the console further comprises memory means for storing historical user data 0033, the step counter further comprises memory means for storing historical user data 15, 8 memory means for storing historical user data comprising the cumulative number of steps taken

by the user by time period 15, the console further comprises a third communication means for communicating with the memory means fig. 2, communication between the first and second communication means is wired 0031, the console further comprises a data processor fig. 2.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Itoh in view of Kawanishi et al.

Itoh do not disclose the step counter comprises an accelerometer to determine step count.

Kawanishi disclose the step counter comprises an accelerometer to determine step count 0104.

It would have been obvious to use Kawanishi's accelerometer with Itoh's step counter, as it is well known as taught by Kawanishi, to use an accelerometer for detecting the number of steps of an exerciser.

Claims 10, 12-19, are rejected under 35 U.S.C. 103(a) as being unpatentable over Itoh in view of Wong et al.

Itoh discloses a step counter for continually counting a cumulative number of steps taken by a user throughout a period of time both while the user is on and off of an

exercise machine 0022, the step counter comprising a first communication means for periodically communicating a current value of the cumulative number of steps taken by the user to a console of the exercise machine while the user is on the exercise machine 14; the console comprising, a second communication means 23 for periodically receiving the current cumulative number of steps from the step counter while the user uses the exercise machine.

Itoh does not disclose a data processor for calculating a current remainder number of steps yet to be taken as a difference between the current cumulative number of steps taken and a goal number of steps.

Wong discloses a data processor for calculating a current remainder number of steps yet to be taken as a difference between the current cumulative number of steps taken and a goal number of steps col. 1, lines 45-59.

It would have been obvious to use Wong's means for calculating, with Itoh's pedometer, as it is well known as taught by Wong, to have a means for calculating a total number of steps remaining in relation to a set goal, for presenting the motivation to a user.

Wong discloses a display for displaying the remainder number of steps col. 1, lines 45-59, a first communication means further communicates the goal number of steps to the console col. 1, lines 45-59, the goal number of steps is input to the console col. 1, lines 45-62, the console further comprises memory means for storing historical user data comprising the cumulative number of steps taken by the user by time period claim 1, the step counter further comprises memory means for storing historical user

data comprising the cumulative number of steps taken by the user by time period col. 1, lines 45-59, further comprising of memory means for storing historical user data comprising the cumulative number of steps taken by the user by time period col. 1, lines 45-59, a third communication means for communicating with the memory means col. 3, lines 9-14.

Claims 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Itoh in view of Wong et al and Kawanishi.

Wong does not disclose the step counter comprises an accelerometer to determine step count.

Kawanishi disclose the step counter comprises an accelerometer to determine step count 0104.

It would have been obvious to use Kawanishi's accelerometer with Wong's step counter, as it is well known as taught by Kawanishi, to use an accelerometer for detecting the number of steps of an exerciser.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Itoh in view of Acres.

Itoh does not disclose the data processor retrieves the historical user data from the memory means and transforms said historical user data into a log format, and wherein the display displays the log-formatted historical user data.

Acres discloses a data processor retrieves historical user data from the memory means and transforms said historical user data into a log format, and wherein the display displays the log-formatted historical user data 0083.

It would have been obvious to use Acres log format with Itoh's device, as it is well known as taught by Acres, to use a log format, for storing historical data.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Glenn Richman/ whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571)272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Glenn Richman/
Primary Examiner
Art Unit 3764